

**United States Department of the Interior
Bureau of Land Management**

**Decision Record
Environmental Assessment
DOI-BLM-CO-S010-2013-0009-EA**

May, 2013

EAGLE - Net Alliance fiber optic ROW

Location:

New Mexico Meridian, Colorado

T. 34 N., R. 3 W.,

sec. 10, SE1/4SW1/4NE1/4.

T. 34 N., R. 8 W.,

sec. 11, NE1/4SW1/4, NW1/4SE1/4;

sec. 12, N1/2SW1/4SW1/4, NW1/4SE1/4SW1/4, N1/2SE1/4.

T. 34 N., R. 9 W.,

sec. 9, lot 5;

sec. 10, NW1/4NE1/4.

The area described contains 1.9 acres.

***Applicant/Address: EAGLE-NET Alliance
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DECISION

I have reviewed the proposed action submitted by the EAGLE-Net Alliance and the Environmental Assessment (DOI-BLM-CO-S010-2013-0009-EA) (EA) and have prepared a Finding of No Significant Impact (FONSI, May 2013). After review of those documents, it is my decision to select the Preferred Alternative – Hybrid Fiber and Wireless Network Technologies (Selected Action) analyzed in Environmental Assessment (EA) No. DOI-BLM-CO-S010-2013-0009-EA and offer a right-of-way (ROW) to EAGLE-Net Alliance for Fiber Optic cable.

This decision is contingent on EAGLE-Net Alliance complying with the mitigation measures described in the Preferred Alternative of the EA, which includes using wireless technology to avoid disturbing Critical Habitat or Potentially Suitable Habitat of Federally listed endangered species, *Pagosa skyrocket*. New fiber optic cable will be installed within the existing U.S. Highway 160 ROW at the following locations:

New Mexico Meridian, Colorado

- T. 34 N., R. 3 W.,
sec. 10, SE1/4SW1/4NE1/4.
- T. 34 N., R. 8 W.,
sec. 11, NE1/4SW1/4, NW1/4SE1/4;
sec. 12, N1/2SW1/4SW1/4, NW1/4SE1/4SW1/4, N1/2SE1/4.
- T. 34 N., R. 9 W.,
sec. 9, lot 5;
sec. 10, NW1/4NE1/4.

The area described contains 1.9 acres of BLM lands.

Finding of No Significant Impact:

A finding of No Significant Impact was approved for the proposed activities analyzed in EAGLE-Net Alliance Fiber Optic ROW EA No. CO-S010-2013-0009. I determined that the project is not a major federal action and will not significantly affect the quality of the human environment, individually or cumulatively with other actions in the general area. Because there would not be any significant impact, an environmental impact statement is not required.

Authorities: The authority for this decision is contained in Title V, Federal Land Policy and Management Act of 1976, and Federal regulations contained in 43 CFR 2800.

Compliance and Monitoring: Potential resource conflicts with the federally endangered plant *Pagosa skyrocket* were resolved in the selected action (preferred alternative) by using wireless technology and as a result avoiding any ground disturbing activities in the identified critical habitat, identified in Appendix N of the EA.

Once the ROW is granted, monitoring will be conducted by the BLM authorized officer once per week during construction. Once the fiber optic cable is installed, the BLM authorized officer will monitor once to ensure compliance with the stipulations as written in the below section.

Coordination would need to occur throughout the course of construction with the Colorado Department of Transportation (CDOT) so as not to infringe on existing ROWs.

Terms / Conditions / Stipulations

1. Locates Requirement: Prior to any surface disturbing activities, the Utility Notification Center of Colorado, telephone number 811, shall be contacted to verify the location of any utilities buried adjacent to the highways and within the project sites.
2. The holder shall construct, operate, and maintain the facilities, improvements, and structures within this right-of-way in strict conformity with the plan of development which was approved and made part of the grant on _____. Any relocation, additional construction, or use that is not in accord with the approved plan of development, shall not be initiated without the prior written approval of the authorized officer. A copy of the complete right-of-way grant, including all stipulations and approved plan of development, shall be made available on the right-of-way area during construction, operation, and termination. Noncompliance with the above will be grounds for an immediate temporary suspension of activities if it constitutes a threat to public health and safety or the environment.
3. The holder shall submit a plan of development that describe in detail the construction, operation, maintenance, and termination of the right-of-way and its associated improvements and/or facilities. The degree and scope of these plans will vary depending upon (1) the complexity of the right-of-way or its associated improvements and/or facilities, (2) the anticipated conflicts that require mitigation, and (3) additional technical information required by the authorized officer. The plan will be reviewed, and if appropriate, modified and approved by the authorized officer. An approved plan of development shall be made a part of the right-of-way grant.
4. The holder shall contact the authorized officer at least 5 days prior to the anticipated start of construction and/or any surface disturbing activities. The authorized officer may require and schedule a preconstruction conference with the holder prior to the holder's commencing construction and/or surface disturbing activities on the right-of-way. The holder and/or his representative shall attend this conference. The holder's contractor, or agents involved with construction and/or any surface disturbing activities associated with the right-of-way, shall also attend this conference to review the stipulations of the grant including the plan of development.
5. The holder shall designate a representative(s) who shall have the authority to act upon and to implement instructions from the authorized officer. The holder's representative shall be available for communication with the authorized officer within a reasonable time when construction or other surface disturbing activities are underway.
6. The authorized officer may suspend or terminate in whole, or in part, any notice to proceed which has been issued when, in his judgment, unforeseen conditions

arise which result in the approved terms and conditions being inadequate to protect the public health and safety or to protect the environment.

7. The holder shall not initiate any construction or other surface disturbing activities on the right-of-way without the prior written authorization of the authorized officer. Such authorization shall be a written notice to proceed issued by the authorized officer. Any notice to proceed shall authorize construction or use only as therein expressly stated and only for the particular location or use therein described.
8. The design and location of all facilities shall be approved by the authorized officer prior to construction.
9. No signs or advertising devices shall be placed on the premises or on adjacent public lands, except those posted by or at the direction of the authorized officer.
10. Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the authorized officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the authorized officer after consulting with the holder.
11. The holder shall protect all survey monuments found within the right-of-way. Survey monuments include, but are not limited to, General Land Office and Bureau of Land Management Cadastral Survey Corners, reference corners, witness points, U.S. Coastal and Geodetic benchmarks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. In the event of obliteration or disturbance of any of the above, the holder shall immediately report the incident, in writing, to the authorized officer and the respective installing authority if known. Where General Land Office or Bureau of Land Management right-of-way monuments or references are obliterated during operations, the holder shall secure the services of a registered land surveyor or a Bureau cadastral surveyor to restore the disturbed monuments and references using surveying procedures found in the Manual of Surveying Instructions for the Survey of the Public Lands in the United States, latest edition. The holder shall record such survey in the appropriate county and send a copy to the authorized officer. If the Bureau cadastral surveyors or other Federal surveyors are used to restore the disturbed survey monument, the holder shall be responsible for the survey cost.
12. The holder of this right-of-way grant or the holder's successor in interest shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and the regulations of the Secretary of Interior issued pursuant thereto.
13. The holder shall comply with the construction practices and mitigating measures established by 33 CFR 323.4, which sets forth the parameters of the "nationwide

permit" required by Section 404 of the Clean Water Act. If the proposed action exceeds the parameters of the nationwide permit, the holder shall obtain an individual permit from the appropriate office of the Army Corps of Engineers and provide the authorized officer with a copy of same. Failure to comply with this requirement shall be cause for suspension or termination of this right-of-way grant.

14. Right-of-way clearing shall be limited to 5 feet on each side of the centerline.
15. Excess excavated, unsuitable, or slide materials shall be disposed of as directed by the authorized officer.
16. No construction or routine maintenance activities shall be performed during periods when the soil is too wet to adequately support construction equipment. If such equipment creates ruts in excess of 5 inches deep, the soil shall be deemed too wet to adequately support construction equipment.
17. The holder shall conduct all activities associated with the construction, operation, and termination of the right-of-way within the authorized limits of the right-of-way.
18. Construction holes left open overnight shall be covered. Covers shall be secured in place and shall be strong enough to prevent livestock or wildlife from falling through and into a hole.
19. All design, material, and construction, operation, maintenance, and termination practices shall be in accordance with safe and proven engineering practices.
20. Holder shall limit excavation to the areas of construction. No borrow areas for fill material will be permitted on the site. All off-site borrow areas must be approved in writing by the authorized officer in advance of excavation. All waste material resulting from construction or use of the site by holder shall be removed from the site. All waste disposal sites on public land must be approved in writing by the authorized officer in advance of use.
21. Construction sites shall be maintained in a sanitary condition at all times; waste materials at those sites shall be disposed of promptly at an appropriate waste disposal site. "Waste" means all discarded matter including, but not limited to, human waste, trash, garbage, refuse, oil drums, petroleum products, ashes, and equipment.
22. The holder of Right-of-Way No. COC-75552 agrees to indemnify the United States against any liability arising from the release of any hazardous substance or hazardous waste (as these terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C 9601, et.seq. or the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et. seq.) on the right-of-way (unless the release or threatened release is wholly unrelated to the right-of-way holder's activity on the right-of-way). This agreement applies without regard to whether a release is caused by the holder, its agent, or unrelated third parties.

23. In the event of termination of this right-of-way grant, sub lessee shall, at the option of the BLM authorized officer, either transfer to the next BLM designated holder as lessee or apply for a right-of-way in his/her own name.
24. Subleasing of space/equipment to additional telecommunication providers without further approval from the BLM is allowed. Subleasing includes any change in ownership of any portion of the project, or the subleasing of space to additional telecommunication service providers. These additional telecommunication providers will not be required to obtain a separate grant for their use. No additional rent will be assessed to the ROW holder for the additional sublease owner(s) or telecommunication provider(s) within the project or facility. The holder is liable and responsible for compliance with all terms/conditions of the grant, including compliance with the terms/conditions by any additional user.
25. The holder must notify the BLM of any change in ownership.
26. The holder will be assessed an annual rent that is determined by using the existing linear rent schedule found at 43 CFR 2803.1-2(c).
27. The authorized ROW area shall include appropriate width to accommodate the construction, operation/maintenance and termination of all components of the project, including all conduits, marker poles, maintenance stations, in-line amplifiers, and re-generation facilities. A short term ROW grant may be issued to accommodate temporary construction activities.
28. The holder must amend the ROW grant at any time additional land, equipment, and /or new uses are proposed which are beyond the scope of the existing authorization.

PLAN CONFORMANCE AND CONSISTENCY:

The proposed action and alternatives have been reviewed and found to be in conformance with one or more of the following BLM Land Use Plans and the associated decision(s):

San Juan/San Miguel Planning Area Resource Management Plan, 1985

Alternatives Considered: The EA considered two action alternatives (proposed action and preferred alternative), and a No Action alternative. The No Action alternative was not chosen because it would not meet the intended purpose of the project, which is to provide enhanced broadband access to rural communities. Alternative 2 – Complete Core Network Fiber, was not chosen because of the potential effect to federally endangered *Pagosa skyrocket*. Removing the Critical habitat for *Pagosa skyrocket* from the project area prevents impacts to the endangered plant.

Rationale for Decision:

The selected alternative was determined by the analysis in the EA. Alternative 1 – Hybrid Fiber and Wireless Network Technologies (Preferred Alternative) was selected because it meets the purpose and need of the project while avoiding critical habitat of the endangered plant, *Pagosa*

skyrocket. Wireless technology will be used to avoid disturbing critical habitat of federally listed *Pagosa skyrocket*. Microwave antennas would be installed on existing towers located on non-federal lands to transfer wireless signal. The new fiber optic cable would be buried in the shoulder of the existing U.S. Highway 160 ROW. By following mitigation measures analyzed in alternative 1, no significant adverse impacts on biological or cultural resources are anticipated.

Protest/Appeal Language: This decision shall take effect upon issuance of a "Grant Issued" decision letter by the Authorized Officer, and shall remain in effect while any appeal is pending unless the Interior Board of Land Appeals issues a stay (43 CFR 2801.10(b)). Any appeal of this decision must follow the procedures set forth in 43 CFR Part 4. Within 30 days of the decision, a notice of appeal must be filed in the office of the Authorized Officer, Connie Clementson at Tres Rios Field Office, 29211 Hwy 184, Dolores, CO 81323. If a statement of reasons for the appeal is not included with the notice, it must be filed with the Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy St., Suite 300, Arlington, VA 22203 within 30 days after the notice of appeal is filed with the Authorized Officer.

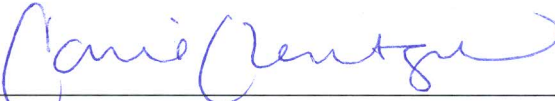
If you wish to file a petition for stay pursuant to 43 CFR Par 4.21(b), the petition for stay should accompany your notice of appeal and shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of irreparable harm to the appellant or resources if the stay is not granted, and
4. Whether the public interest favors granting a stay.


If a petition for stay is submitted with the notice of appeal, a copy of the notice of appeal and petition for stay must be served on each party named in the decision from which the appeal is taken, and with the IBLA at the same time it is filed with the Authorized Officer.

A copy of the notice of appeal, any statement of reasons and all pertinent documents must be served on each adverse party named in the decision from which the appeal is taken and on the Office of the Regional Solicitor.

Approved:



Connie Clementson



Date

Field Manager

Tres Rios Field Office